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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,181	10/30/2001	Loel Fenwick	FE4-006	9538
21567	7590	12/22/2003	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			NASSER, ROBERT L	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 12/22/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,181

Applicant(s)

FENWICK ET AL.

Examiner

Robert L. Nasser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-21 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,-4, 6, 7, and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallo. Gallo shows an article of clothing, i.e. a belt, including a first fabric panel 13 and a second panel 21, made of opaque stretch fabric, that is sewn to the first panel and has a free end that attaches to a connector 29 forming a pocket to retain a sensor. The examiner notes that the claims do not positively recite a sensor, and Gallo is capable of receiving a sensor. Applicant might overcome Gallo by reciting the combination of the garment and the sensor. With respect to claim 3, Gallo is configured to meet the claim limitations, depending on what it is wrapped around. With respect to claim 15, the examiner notes that Gallo is an equivalent structure to that claimed, as both are capable of supporting devices relative to the human body, specifically, around the thoracic region. With respect to claim 18, the examiner notes that the term “infant” is an intended use limitation and that the device of Gallo can be used on an infant.

Claims 15, 16, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Keyes. Keyes shows a shirt with pockets, each of which has a hole in the back for allowing access to the body. Again, it is the examiner’s position that the structure is equivalent to applicant’s shirt, as both allow sensors to be positioned relative to the chest.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo.

Gallo says that the connector 29 can be any suitable connector. The examiner takes official notice that VELCRO is a suitable fastener and that it would have been obvious to modify Gallo to use VELCRO as it is merely the substitution of one known fastener for another.

Claims 6, 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephens et al in view of Keyes. Stephens shows an infant shirt with a breathing monitor located in the pocket. Stephens teaches that it is usable with other sensors (see column 9, lines 40-60). The pocket lacks the opening recited in the claims. Keyes et al shows a medical garment that has openings in the pocket to allow a sensor to contact the body, and be contained within the garment. Hence, it would have been obvious to modify Stephens to allow the sensors to have access to the patient through holes in the pocket as it is merely the substitution of one known configuration sensors for another. Stephens includes a stretch fabric layer 41 sewn to the shirt.

Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the

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base claim and any intervening claims. Claim 11 defines over the art in that none of the art shows an shirt with a pocket formed by a elastic band and a fabric layer, as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Foster shows a fishing shirt, where the back of the pocket is removable.

Vreman et al and Halleck et al show infant monitors in clothing items.

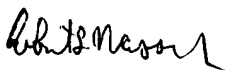
Rasmussen shows an ekg device in a vest.

Ojoyeyi shows a medical garment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Robert L. Nasser
Primary Examiner
Art Unit 3736

RLN
December 15, 2003

ROBERT L. NASSER
PRIMARY EXAMINER